

Pandemic-era Overpayments

ESD implemented new rules and expanded existing policies and procedures for waiving overpayments from the COVID-19 pandemic era — between Feb. 2, 2020, to Sept. 4, 2021. Due to historic unemployment caused by the shutdown orders during the pandemic, ESD implemented multiple new federal and state benefit programs with complex interactions. A large backlog of overpayments resulted, creating hardship for those affected.

Equity and good conscience

Under federal guidance, CARES Act overpayments can be waived for the following reasons of equity and good conscience, if the claimant is not at fault:

- **Financial hardship.** The claimant needed their income to meet ordinary living expenses.
- **Detrimental reliance.** The claimant relied on getting benefits when making financial decisions.
- **Unconscionable under the circumstances.** Requiring repayment would be extremely unfair.

Note: State policy for all overpayments of unemployment benefits during the pandemic has also been updated. It now emphasizes additional equity and good conscience factors to align with federal guidance and our agency's values.

How ESD is handling pandemic-era overpayments

Automatic waivers: Starting March 29, 2023, we will issue blanket waivers and administrative charge-offs for some types of overpayments. Claimants will get a letter to let them know they got one, and no action is needed. More automatic waivers may be sent later in 2023. In most circumstances, ESD will also refund people who were repaying their overpayment.

A new waiver request form: Starting April 7, 2023, claimants will be able to request a waiver online at esd.wa.gov. We will manually review waiver requests we receive. This process will take time. We will let claimants know if their application and the information in their claim file show that they qualify for a waiver or not.

If we waive an overpayment, we will also waive any interest associated with that overpayment. Claimants who do not qualify for a waiver will need to pay interest on any overpayment on their regular state unemployment claim, but not on their federal claims.

Status and statistics

Budget requests are \$11.7 million for the backlog and \$21 million to maintain current work.

The backlog of pandemic-era overpayment cases is 136,000. If ESD gets more funding from the Legislature and U.S. Department of Labor, the work may take six to 12 months. Otherwise, it could take years.

The total number of claimants getting waivers is unknown because it depends on the number of waiver requests, most of which must be individually reviewed. About 21,000 will get blanket waivers.

ESD staff to adjudicate the waiver requests will come from existing resourcing, as the project is not funded. ESD currently has 239 full-time positions that provide direct assistance to claimants, but 26 are vacant. More staff will be added if the project receives more funding.

Unemployment Claims Center call volumes in January 2023 had an answer rate of 27.62% with a 39-minute average wait time for all incoming calls of people trying to speak to an agent. This was during peak season. Wait times and calls answered are typically lower outside of peak season.

Automatic waiver recipients

Approximately 21,000 claimants in the following situations could receive a blanket waiver:

- **Administrative waivers:** Claimants with an overpayment less than \$1,000 during the pandemic-era and never made a repayment will get an automatic write-off of their overpayment.
- **COVID-19 reasons:** Claimants told us they did not have an approved COVID-19 reason to claim Pandemic Unemployment Assistance (PUA) benefits. We still paid them benefits. This resulted in an overpayment.
- **Able and available:** Claimants told us they were not able and available to work. We paid them while we decided if they were eligible for benefits. This resulted in an overpayment.
- **High to low weekly benefit amount:** Claimants were paid on a federal pandemic benefit claim. But we later determined they were no longer eligible for those benefits because they were eligible for a new state unemployment claim. We moved the claimants to a new claim, but the weekly benefit amount on this new claim was lower than their previous claim. When we transferred the weeks, it caused an overpayment.
- **PUA weekly benefit amount:** The state had to correct earnings information on PUA claims' base year. This led to a recalculation of claimants' weekly benefit amounts. These recalculations resulted in lower weekly benefit amounts, which caused overpayments.

Learn more

- Pandemic-era overpayment waive update at esd.wa.gov/overpayments
- General information about overpayments at esd.wa.gov/unemployment/overpayments

Questions and answers

Q: What is an overpayment?

Overpayments occur when claimants get unemployment insurance benefits they were later found to not be eligible for and must pay back.

Q: Who will be eligible for a waiver?

Claimants with overpayments from weeks during the COVID-19 pandemic (from Feb. 2, 2020, to Sept. 4, 2021) may be eligible, if they are not at fault and repaying would be unfair.

Q: What if an overpayment is from outside the pandemic era?

If someone has an overpayment from a week outside of the pandemic era, they can request:

- A payment plan if they cannot afford to repay the overpayment all at once.
- An appeal if they believe they should not have an overpayment and they submit the appeal within 30 days of when they were first notified about the overpayment.

Q: How will claimants know if they qualify?

We will review the information we have now and from waiver requests we receive – once the new pandemic-era waiver request form is available – to determine if a claimant qualifies. We will contact them through their preferred choice of communication if their application shows that they qualify for a waiver or not.

Q: Should claimants still be making payments?

While they wait to hear about their waiver request, a claimant can set up a payment plan to start repaying their overpayment. They can set up a repayment plan by calling the Employment Security Collections Unit at 866-697-4831.

Q. If a large overpayment is waived, will the amount forgiven be subject to federal income tax?

Yes. Waiving an overpayment of any amount does not affect the benefits' taxability. All benefits received are subject to federal income tax. The 1099-G for the year the claimant originally received benefits will remain valid even after an overpayment for those benefits is waived. But if any part of an overpayment is repaid, claimants must give the IRS documentation when filing their taxes to prove the amount paid. Repayment of benefits received reduces the taxable benefits.

Q: What if claimants already started paying, or fully repaid, their overpayment?

They will receive a refund if they already made payments on their pandemic-era overpayment and we decide to waive it. The refund will go to the payment method we have on file.

ESD will refund repayments that are later waived. Claimants who reported in an earlier tax year that they made a repayment of unemployment benefits may need to check with the IRS to see if a refund will have tax implications.

Q. If a refund is created as a result of a waived overpayment, where will the funds come from to refund claimants?

Waivers and potential refunds for CARES Act overpayments come from federal CARES funds.

Only administrative charge-offs are processed with state unemployment compensation (UC) funds. But no refunds will be issued to this group. Funding for charge-offs will come from the state UC money, even if the overpayment was for a CARES Act program.

Q. If an overpayment is waived, will the corresponding employers see a reduction in their experience rating for future premium assessments?

Waived overpayments should not affect an employer's experience rating because:

- Most overpayments that will be waived are from the fully federally funded CARES Act programs.
- There is no charge to employers if a claimant is not eligible for unemployment benefits.

However, reimbursable employers may be affected. Unless claimants repay their overpayment, these employers must reimburse the department for the amount of benefits paid, including the overpaid amount. If a claimant repaid an overpayment and later receives a waiver and refund of the repayment, the employer will again need to reimburse those benefits paid. These employers can appeal the waiver. All interested parties would be included in the appeal process.

Q: Why is the waiver request form releasing in April and not in the first quarter of 2023?

We have been developing the waiver request form and the automatic waiver process at the same time. During this process, we have been navigating highly complex legal, technical and financial requirements at the federal and state levels, as well as within ESD's different systems. But we can confirm that the pandemic-era overpayment waiver request form will be available online on April 7, 2023.

Q: What if a claimant wants to reverse their waiver?

If a claimant is granted a waiver of their pandemic-era overpayment, they can request that we reverse our decision. They can fill out and submit a waiver reversal form. However, if they already repaid the overpayment and received a refund, they will be required to pay us back again.